

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**SCOTT M RASMUSSEN
4403 MAIN ST
ELKHORN IA 51531**

**WESTERN ENGINEERING COMPANY INC
PO BOX 350
HARLAN IA 51537**

**Appeal Number: 05A-UI-07818-S2
OC: 07/03/05 R: 01
Claimant: Respondent (2)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-1 - Voluntary Quit
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Western Engineering Company (employer) appealed a representative's July 25, 2005 decision (reference 01) that concluded Scott Rasmussen (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, an in-person hearing was held in Council Bluffs, Iowa, on October 13, 2005. The claimant participated personally. The employer participated by Larry Peters, Human Resources and Risk Manager. The claimant offered two exhibits which were marked for identification as Exhibits A and B. Exhibits A and B were received into evidence. The employer offered three exhibits which were marked for identification as Exhibits One, Two and Three. Exhibits One, Two and Three were received into evidence.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on August 26, 2002, as a full-time mechanic and welder. On August 25, 2004, the claimant developed respiratory symptoms. Shortly after the exposure in August 2004, the claimant filed a workers' compensation action stating he was having breathing problems due to his working conditions. The claimant saw his physician in August and September 2004, and reported the problem to his employer.

In response to the claimant's allegations the employer had the claimant trained in the proper use of a respirator on October 8, 2004. In addition the employer moved the claimant from working in the main shop to working in the lower shop and outside. To clock in and out and to retrieve some parts the claimant had to enter the main shop.

The claimant did not like the outside location because there was no shade. He did not want to enter the main shop because he had breathing problems when he did so. He did not want to put on the respirator to enter the main shop because it took too long. The claimant never complained to the employer about any problems after receiving the respirator and moving to a different working location. The only time the claimant had breathing problems after his move was when he entered the main shop without the respirator. The claimant continued to smoke one-half pack of cigarettes per day which exacerbated his condition. On or about June 29, 2005, the claimant gave the employer a doctor's note indicating the claimant had to quit work because of his condition. The claimant took another job as a welder at the end of July 2005.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left his employment with good cause attributable to the employer.

Iowa Code section 96.5-1-d provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department. But the individual shall not be disqualified if the department finds that:

d. The individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and the individual's regular work or comparable suitable work was not available, if so found by the department, provided the individual is otherwise eligible.

871 IAC 24.26(6)b provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(6) Separation because of illness, injury, or pregnancy.

b. Employment related separation. The claimant was compelled to leave employment because of an illness, injury, or allergy condition that was attributable to the employment. Factors and circumstances directly connected with the employment which caused or aggravated the illness, injury, allergy, or disease to the employee which made it impossible for the employee to continue in employment because of serious danger to the employee's health may be held to be an involuntary termination of employment and constitute good cause attributable to the employer. The claimant will be eligible for benefits if compelled to leave employment as a result of an injury suffered on the job.

In order to be eligible under this paragraph "b" an individual must present competent evidence showing adequate health reasons to justify termination; before quitting have informed the employer of the work-related health problem and inform the employer that the individual intends to quit unless the problem is corrected or the individual is reasonably accommodated. Reasonable accommodation includes other comparable work, which is not injurious to the claimant's health and for which the claimant must remain available.

The claimant resigned alleging a medical condition caused by working conditions. The Supreme Court held that in medical resignations, the claimant must first give the employer notice of the problem and an opportunity to remedy it. Suluki v. Employment Appeal Board, 503 N.W.2d (Iowa 1993). The claimant did not notify the employer of any problems after the employer made accommodations. In addition, the claimant did not use the accommodations the employer provided. Due to the claimant's failure to give the employer notice, there cannot be a finding that he left work with good cause attributable to the employer and, therefore, the claimant is not eligible to receive unemployment insurance benefits.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The claimant has received benefits in the amount of \$674.00 since filing his claim herein. Pursuant to this decision, those benefits now constitute an overpayment which must be repaid.

DECISION:

The July 25, 2005, reference 01, decision is reversed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until he has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The claimant is overpaid benefits in the amount of \$674.00.

bas/pjs